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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/773,508

02/05/2004

Richard S. Ginn

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ORRICK, HERRINGTON & SUTCLIFFE, LLP  
IP PROSECUTION DEPARTMENT  
4 PARK PLAZA  
SUITE 1600  
IRVINE, CA 92614-2558

EXAMINER

SCHILLINGER, ANN M

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

03/24/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/773,508	<b>Applicant(s)</b> GINN, RICHARD S.	
	<b>Examiner</b> ANN SCHILLINGER	<b>Art Unit</b> 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, and 4-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 10, 11, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker, Jr. et al. (US Pat. No. 5,674,295) in view of Geistlich et al. (US Pat. No. 6,221,109). Barker, Jr. et al. discloses wrapping a polymeric, braided band around various small bones and/or ligaments, including areas of the spine (col.4, line 23 through col. 5, line 60). The band is constructed from a high strength, biocompatible polymer and may be inserted into its desired position with the assistance of instruments in a cable needle and splicing technique (col. 11, line 66 through col. 12, line 60). The band may be used as a fusion or repair device to stabilize the area it is surrounding. It is known that a wrapping device may be used to support and facilitate the healing of the area the wrap was applied to as evidenced by Ray et al. (col. 2, line 34 through col. 3, line 26). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the wrapping device of Barker, Jr. et al. around a spinal disc in order to support and facilitate the healing of the area the device has been applied to.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker, Jr. et al. in view of Geistlich et al., further in view of Schneiderman (U.S. Pub. No. 2003/0032965). Barker, Jr. et al., as modified by Geistlich et al., does not disclose the use of a fork member to place traction of the vertebrae and make it easier to insert the band. Schneiderman teaches a

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surgical guide system with such a method, described in claims 5 and 6 as follows: the method of claim 4, wherein the adjusting step comprises: engaging at least one of the vertebrae between tines (106, 108, 116) of a fork member (100); and manipulating the tines between the vertebrae to increase a space between the vertebrae; and the method of claim 4, wherein the adjusting step comprises subjecting the patient to traction (paragraph 0043). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use this fork member if needed to more easily insert the band into the vertebral region.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker, Jr. et al. in view of Geistlich et al., further in view of Belef et al. (U.S. Pub. No. 2002/0147497).

Barker, Jr. et al., as modified by Geistlich et al., discloses the invention substantially as claimed, however, they do not disclose the use of extra-cellular matrix material. Belef et al. teaches the use of this material in paragraph 0013 for the purpose of promoting bone growth. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use extra-cellular matrix material as the fill material of the band to promote bone growth and healing in the patient.

Claims 12-14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker, Jr. et al. in view of Geistlich et al., further in view of Keith et al. (U.S. Pat. No. 6,805,695). Regarding claims 12-14, Barker, Jr. et al., as modified by Geistlich et al., discloses the invention substantially as claimed, however, they do not disclose applying electrical energy to the band. Keith et al. teaches spinal disorder treatments that apply electrical energy to the damaged area in col. 10, lines 20-63 for the purpose of promoting healing. Therefore, it would

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have been obvious to one of ordinary skill in the art at the time the invention was made to apply electrical energy to the band in order to promote healing.

Regarding claims 16-18, Barker, Jr. et al., as modified by Geistlich et al., discloses the invention substantially as claimed, however, they do not disclose the use of opposite hand tubular guide member. Keith et al. teaches spinal disorder treatments that uses opposite hand tubular guide members their associated method in Figures 11A-11D, and in col. 14, line 64 through col. 15, line 49 for the purpose of facilitating the insertion of the band. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the opposite-hand tubular guide members in order to more easily insert the band to its desired location.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 2, and 4-18 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ann Schillinger/  
Examiner, Art Unit 3774

/Corrine M McDermott/  
Supervisory Patent Examiner, Art Unit 3738